

## DEPARTMENT OF INDUSTRIAL RELATIONS

**DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**

1515 CLAY STREET, SUITE 1901

OAKLAND, CA 94612

(510) 286-7000



ADDRESS REPLY TO:  
PO BOX 420603  
SAN FRANCISCO 94142-0603

## **Title 8. Division of Occupational Safety and Health**

### **Notice of Proposed Rulemaking**

Proposed Changes to Sections 344.16 (Fee Schedule) and 344.18 (Amusement Ride Fee Schedule)

#### **NATURE OF PROCEEDING**

NOTICE IS HEREBY GIVEN that the Division of Occupational Safety and Health ("the Division") of the Department of Industrial Relations is proposing to take the action described in the Informative Digest/Policy Statement Overview ("the Proposed Rulemaking"). Any person interested may present statements or arguments orally or in writing relevant to the Proposed Rulemaking at a hearing to be held in the Training Room at 1515 Clay Street, 13<sup>th</sup> Floor in Oakland, California, on June 10, 2009, between 1:30 and 3:30 p.m.

The facilities for the public hearing are accessible to persons with mobility impairments, and other disability accommodations are available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the programs of the Division of Occupational Safety and Health, should contact the Disability Accommodation Coordinator or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

Written Comment Deadline: Any interested person, or his or her authorized representative, may submit written comments relevant to the Proposed Rulemaking to the contact person mentioned below by 3:30 p.m. on June 10, 2009. Interested persons may submit written or verbal comments at the public hearing. Persons who are unable or who do not wish to attend the public hearing may mail or FAX comments to:

Chris Grossgart, Staff Counsel

DOSH Legal

1515 Clay Street, Suite 1901, Oakland, CA 94612

FAX: (510) 286-7039

The official record of the rulemaking proceeding will be closed at the conclusion of the public hearing. The Division will not consider written comments received after the close of the public hearing unless an extension of time in which to receive written comments is announced at the public hearing.

The Division may thereafter adopt the Proposed Rulemaking substantially as described below or may modify it if such modifications are sufficiently related to the original text. With the exception of technical, grammatical or other non-substantive changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the persons designated in this Notice as contact persons and will be mailed to those persons who submit written or oral testimony related to the Proposed Rulemaking or who request notification of any changes to the Proposed Rulemaking.

## **AUTHORITY AND REFERENCE**

Pursuant to the authority vested by Sections 60.5, 7923, 7928 and 7929 of the Labor Code, and to implement, interpret or make specific Sections 7920 through 7932 of the Labor Code, and Section 11010 of the Government Code, the Division is considering changes to Division 1 of Title 8 of the California Code of Regulations as follows: Amendment of Chapter 3.2, Section 344.16 to modify fees charged by the Division for audits, inspections, re-inspections and investigations of permanent amusement rides.

Further, pursuant to the authority vested by Sections 60.5, 6308 and 7904 of the Labor Code, and to implement, interpret or make specific Section 7904 of the Labor Code, and Section 11010 of the Government Code, the Division is considering changes to Division 1 of Title 8 of the California Code of Regulations as follows: Amendment of Chapter 3.2, Section 344.18 to modify fees charged by the Division for audits, inspections, re-inspections and investigations of portable amusement rides.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Pursuant to Labor Code sections 60.5 and 6308, the Division is charged with the administration and enforcement of the provisions of the California Occupational Safety and Health Act, commencing with Labor Code section 6300, as well as other provisions of law impacting upon the health and safety of employees and the public in the State of California.

As part of its mandate, the Division regulates aspects of the operation, repair and inspection of both permanent amusement rides (rides which are installed in a fixed location, also known as "Permanent ARs") and portable amusement rides (rides which are assembled and disassembled at different sites as part of a traveling attraction, herein referred to as "Portable ARs").

Pursuant to the Amusement Rides Safety Law (Labor Code sections 7900 through 7915,) the Division is charged with establishing and administering a state system for the permitting and inspection of Portable ARs. The Division is authorized to collect fees for the inspection of Portable ARs to cover the costs it incurs in having inspections performed by a Division safety engineer. Pursuant to Government Code section 11010, the fees must be sufficient to reimburse the Division's administrative costs in providing its services.

Similarly, pursuant to the Permanent Amusement Ride Safety Inspection Program Law (Labor Code sections 7920 through 7932) the Division is charged with establishing and administering a state system for the inspection of Permanent ARs. The Division is authorized to adopt rules and regulations necessary for the administration of its Permanent AR program, and may fix and collect all fees necessary to cover its costs of administration. (See, also, Government Code section 11010.)

Currently, both the Division's Permanent AR fee schedule (found at Title 8, Section 344.16) and its Portable AR fee schedule (found at Title 8, Section 344.18) are based on a calculated hourly rate of \$125.00 per hour. In other words, when the Division promulgated its existing amusement ride fees, it calculated that it would need to charge \$125 per billed hour of its inspectors' time to fund the administration of its amusement ride programs. That hourly rate is no longer sufficient to cover the cost of the two programs.

Thus, the purpose of this rulemaking (hereinafter "the Proposed Rulemaking") is to increase the Permanent AR fees and Portable AR fees to a level which will adequately fund those programs. To that end, the Division proposes to make the following amendments:

#### Section 344.16: Permanent Amusement Ride Fee Schedule.

The Division proposes to change the title of the section to read "Permanent Amusement Ride Fee Schedule" to differentiate between Section 344.16 and 344.18, and to clarify that Section 344.16 relates to Permanent ARs.

The Division proposes to amend Subsection (d) to reflect a new \$308.00 hourly fee for all work performed in connection with audits, inspections and investigations conducted pursuant to Section 344.8.

The Division also proposes to add the word "reinspections" to the first line of Subsection (d) so that the regulation will correctly reflect the scope of the Division's work. For billing purposes, since the Division charges by the hour, subsection (d) would specify that the actual time charged would begin when the engineer arrives at the work site and would end when the engineer has completed the Division's report and is ready to leave the work site.

#### Section 344.18: Portable Amusement Ride Fee Schedule.

First, the Division proposes to change the title of the section to read "Portable Amusement Ride Fee Schedule" to differentiate between Section 344.16 and 344.18, and to clarify that Section 344.18 relates to Portable ARs.

The Division further proposes to amend Section 344.18(a)(1) to reflect the increase in the fee the Division charges for inspections, reinspections, and accident investigations to \$308.00 per hour, or any fraction of an hour. The Division also proposed to add the word "audits" to subsection (a)(1) to correctly reflect the scope of the Division's work. New language would also clarify that the Division will charge for all work preparatory to, or as part of, the audits, inspections, reinspections and accident investigations.

The Division proposes to add language to Subsection (a)(2) to specify that the time the Division bills for an inspection would begin when the inspector arrives in the area where, according to the information the Division has received, the inspection is to occur.

The Proposed Rulemaking would add language to Subsection (a)(3) to allow the Division to charge for the actual time its inspector spends travelling to a designated inspection site and the time spent waiting at a site, if the representative for the portable amusement ride fails to show up. In cases where the representative shows up late at the site, or is present but not prepared for the inspection at the appointed time, the Division may charge for the inspector's time spent waiting at the site. At the Division's discretion, the inspector may terminate the inspection instead of waiting, and require that a new appointment for inspection be made.

## **LOCAL MANDATE**

The Proposed Rulemaking does not impose a mandate on local agencies or school districts.

## **FISCAL IMPACT ESTIMATES**

The Proposed Rulemaking does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. The Proposed Rulemaking does not impose other nondiscretionary costs or savings on local agencies. The Proposed Rulemaking does not result in any costs or savings in federal funding to the state.

## **COSTS OR SAVINGS TO STATE AGENCIES**

No additional costs or savings to state agencies are anticipated.

## **BUSINESS IMPACT/SMALL BUSINESSES**

The Division has determined that the Proposed Rulemaking will not result in a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Proposed Rulemaking would not affect small businesses, as that term is defined in Government Code section 11342.610, since that section specifically excludes entertainment activities such as amusement parks from the definition of "small business".

## **ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESSES**

The Division has determined that the Proposed Rulemaking will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

## **COST IMPACT ON REPRESENTATIVE PERSON OR BUSINESS**

Permanent ARs: There are 169 owners/operators of Permanent ARs in California. Each owner/operator controls, on the average, about 12 rides. It takes, also as an average, seven hours to inspect a permanent amusement ride. Since the fee increase would ultimately be \$183 per hour, the representative Permanent AR business would pay approximately \$15,000 more in inspection fees per year. ( $\$183 \text{ increase} \times 7 \text{ hours} \times 12 \text{ rides} = \$15,372$ ). This figure does not include fees for accident inspections (such fees depend on the nature of the accident and therefore the amount of time necessary to conduct an investigation) or the fees for travel to conduct inspections (such fees obviously would vary depending on the location of the rides).

Portable ARs: There are 139 owners/operators of Portable ARs in California. Each owner/operator controls an average of six rides. It takes an average of one to two hours to inspect a portable ride. Since the fee increase would ultimately be \$183 per hour, the representative Portable AR business would pay approximately \$1,100 to \$2,200 more in inspection fees per year. (\$183 increase x 1 hour x 6 rides = \$1,098; \$183 increase x 2 hours x 6 rides = \$2,196). These figures do not include fees for accident inspections (such fees depend on the nature of the accident and therefore the amount of time necessary to conduct an investigation) or the fees for travel to conduct inspections (such fees obviously would vary depending on the location of the rides).

## **EFFECT ON HOUSING COSTS**

The Proposed Rulemaking will have no effect on housing costs in California.

## **ALTERNATIVES**

The Division must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the agency's attention, would be more effective in carrying out the purpose for which the amendment of these regulations is proposed, or would be as effective as, and less burdensome to, affected private persons than the Proposed Rulemaking.

## **CONTACT PERSONS**

Inquiries concerning the Proposed Rulemaking and written comments may be directed to:

Chris Grossgart, Staff Counsel (Primary Contact)  
Michael D. Mason, Chief Counsel (Secondary Contact)  
Division of Occupational Safety and Health, Legal Unit  
1515 Clay Street, 19<sup>th</sup> Floor  
Oakland, CA 94612  
(510) 286-7348

## **INITIAL STATEMENT OF REASONS AND INFORMATION**

The Division has prepared an initial statement of reasons for the Proposed Rulemaking and has available all the information upon which the proposal is based.

## **TEXT OF PROPOSED RULEMAKING**

Copies of the exact language of the Proposed Rulemaking and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Division of Occupational Safety and Health, 1515 Clay Street, 19<sup>th</sup> Floor, Oakland, CA 94612. These documents may also be viewed and downloaded by going to "DIR Rulemaking – Proposed Regulations" under the category "Division of Occupational Safety and Health" at [www.dir.ca.gov/DIRRulemaking.html](http://www.dir.ca.gov/DIRRulemaking.html).

## **AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE**

All the information upon which the Proposed Rulemaking is based is contained in the rulemaking file which is available for public inspection by contacting the persons named above.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named above.